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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 15, 1997

COMMONWEALTH OF VIRGINIA
At the relation of the

STATE CORPORATION COMMISSION
Ex Parte: In the matter of revising
Rules for Pay Telephone Service
and Instruments pursuant to the
Pay Telephone Registration Act

CASE NO. PUC970173

INTERIM ORDER ON PHASE I

On November 4, 1997, the State Corporation Commission ("Commission") issued an order that gave notice of proposed revisions to the Commission's Rules for Pay Telephone Service and Instruments to pay telephone providers, local exchange carriers ("LECs"), and interexchange carriers subject to the Commission's jurisdiction. These proposed rule revisions sought to eliminate disparities between the pay telephone service provided by local exchange carriers and that provided by companies formerly known as private pay telephone providers. All payphone providers are now referred to as Payphone Service Providers in the attached rules. Comments and requests for hearing on the proposed rule revisions were to be filed with the Clerk of the Commission on or before November 25, 1997.

No requests for hearing were filed in response to the November 4, 1997 Order. Timely comments were filed by Bell Atlantic-Virginia, Inc. ("BA-VA"), GTE South Incorporated ("GTE"), the Virginia Telecommunications Industry Association ("VTIA"), and AT&T Communications of Virginia, Inc. ("AT&T").

On December 3, 1997, the Commission entered an Order that bifurcated the proceeding into two phases. Phase I of the proceeding considered proposed Rules A 1 through A 3, dealing with the registration and fees for the registration of pay telephone instruments. Phase II was to consider additional rule revisions recommended in the comments filed in the proceeding, together with any additional revisions to the rules the Staff and case participants wished the Commission to consider. The December 3, 1997 Order directed the Staff to file a Report addressing the comments on the revisions to proposed Rules A 1 through A 3 with the Clerk of the Commission on or before December 4, 1997. The same Order directed the Staff to telefax a copy of its Report to counsel for BA-VA, GTE, the VTIA, and AT&T, by no later than December 4, 1997. The Order invited BA-VA, GTE, the VTIA, and AT&T to file its respective responses to the Staff Report on or before December 10, 1997, and continued the matter to consider further procedures for Phase II.

On December 4, 1997, the Staff filed its Report. Only Rule A 3 received comment by BA-VA, GTE, and the VTIA. In its Report, among other things, Staff filed a study, supporting its \$4.00 per payphone registration fee. Additionally, the Staff recommended that the Commission modify its rules to provide that late fees for the 1998 registration period be waived for registrations received at the Commission post-marked on or before January 15, 1998. Staff suggested that LECs could seek a legislative remedy if the special regulatory revenue tax proved overly burdensome to them.

Only BA-VA filed Comments in response to Staff's report. In its Comments, BA-VA asserts that the special regulatory revenue tax supports the on-going operations of the Commission and that the registration fee paid previously by non-regulated providers of payphone service was designed to support the incremental costs associated with administering the payphone rules. It maintains that the costs identified in the Staff Report do not appear to be incremental costs and that, as such, incumbent local exchange carriers ("ILECs") appear to be paying the same costs twice - once in the registration fee and again through the regulatory revenue tax.. BA-VA requested that the payphone registration fee be set at \$2.00 per payphone, or if the registration fee

is set at \$4.00, that ILECs be allowed to offset the fee by the amount of regulatory revenue tax associated with non-regulated payphone revenues.

NOW, UPON consideration of the rules proposed for consideration in Phase I hereof, the Staff Report, and the Comments received in response thereto, the Commission finds that § 56-508.16 of the Pay Telephone Registration Act ("the Act") authorizes the Commission, when promulgating rules to implement the Act, to levy and collect reasonable registration or other fees for payphones without regard to whether a payphone service provider is a regulated telephone company or not. Further, as demonstrated by the Staff's December 4, 1997, Report, the administrative costs associated with the registration and investigative processes will increase incrementally as a result of ILECs submitting registration forms. The additional number of payphones, approximately 38,000, will necessarily place a growing administrative burden on the Commission and its Staff.

Contrary to the assertions made in BA-VA's Comments, these are costs that the Commission and its Staff will incur in addition to the costs of regulation already recovered through the regulatory special assessment tax, § 58.1-2660 of the code of Virginia. As the Staff Report explains, the costs Staff has identified in its study may be understated and do not reflect an increased cost related to enforcement actions that may arise from the increased number of eligible payphone registrants. Accordingly, we find it appropriate to revise Rule 3 to provide for a registration fee of \$4.00 per payphone.¹ As we gain further experience under the operation of our payphone rules, we may subsequently adjust the registration fees to reflect the costs associated with registering the payphones of payphone service providers more precisely.

Finally, we find it appropriate to adopt the Staff's recommendation not to impose a late payment fee for the January 1, 1998, registration period for payphone registrations received by the Public Service Taxation Division bearing a post-mark of no later than January 15, 1998. The

¹ BA-VA or other LECS, of course, are free to seek legislative relief should they determine that payment of the registration fees and the special regulatory revenue tax is unduly burdensome.

revised rules set out in Appendix A should be adopted, effective December 29, 1997, and should supersede those adopted on December 3, 1993, in Case No. PUC930013.² .

Accordingly, IT IS ORDERED THAT:

- (1) Regulations for Pay Telephone Service and Instruments adopted in Case No. PUC930013 are hereby amended as set out in Appendix A hereto, effective December 29, 1997.
- (2) A copy of this Order and the rules adopted herein shall be forwarded promptly for publication in the Virginia Register of Regulations.
- (3) This matter shall be continued pending the issuance of further orders by the Commission.

² The rules in Appendix A contain minor changes necessary to conform the rules to the requirements of the Virginia Register of Regulations. For example, references to "pay telephone service" have been changed to "payphone service," throughout the text of the rules.